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IN THE

Supreme Court of the United States

October Term, 1968
No. 469

VICKI LAUREL PARKER,

vs.

STATE OF CALIFORNIA,

Petition for Writ of Certiorari to the Court of Appeal, Second Appellate District of the State of California.

VICKI LAUREL PARKER,
1600 North Courtney Avenue,
Los Angeles, Calif. 90046,
In Propia Personna.

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VICKI LAUREL PARKER,

vs.

STATE OF CALIFORNIA,

Petition for Writ of Certiorari to the Court of Appeal, Second Appellate District of the State of California.

Vicki Laurel Parker prays that a Writ of Certiorari issue to review the decision of the Court of Appeal, Second Appellate district, State of California, after denial of petition for hearing, without opinion, by the Supreme Court of the State of California; said decision of the Court of Appeal affirmed the conviction of petitioner, of possession of heroin, violation of §11500, Health and Safety Code, and of possession and bringing narcotics into a jail, violation of §4573.6, Penal Code, felonies, in Superior Court, for Los Angeles County.

Opinions Below.

The opinion of the Court of Appeal, Second Appellate District, State of California, is not officially reported. Copy of the typewritten opinion filed March 6, 1968, and of the modification of opinion on denial of

re-hearing, filed April 3, 1968, are attached to the Petition for Hearing (in Supreme Court of California), and are appended hereto (Appendix A, *infra*, pp. 1-10).

Jurisdiction.

The judgment of conviction of petitioner became final after denial of petition for hearing by the Supreme Court, and remittitur was filed, June 3, 1968. Jurisdiction of the Court is invoked under 28 U.S. Code §1257(3).

Question Presented.

Does the 4th Amendment protect the citizen from *investigation* of possible "other crimes", in the absence of any suspicious circumstances or actions to justify it, and merely because the citizen has been stopped by police for issuance of a citation for running a red light?

Statutes Involved.

Statutory provisions of California, involved, are set forth in Appendix B, *infra*, §§ 836, 842, 848, 1269, (b), 4573.6, Penal Code, §§ 40302, 40303, 40305, 40307, 40309, 40311, 40500, 40502, 40510, Vehicle Code, and 11500, Health and Safety Code.

Statement.

At about 10 o'clock, night, May 24, 1965, the petitioner, westbound on Wilshire Boulevard, at Alvarado Street, in Los Angeles, was alleged to have run a red light. Los Angeles police officers Baker and Doran, pursued and she was stopped before the next intersection, at Parkview Street, for issuance of a citation. Allegedly, while writing the citation, the officer "ran a

warrant check", by radio, and received word of a traffic warrant.

The petitioner was ordered to move her car around the corner on Parkview, to a place where parking was not restricted, and after about ten minutes, the officers picked her up and transported her to jail [Pr. Tr. pp. 14, 15].

At the station, the officer testified petitioner, awaiting turn at being booked, fumbled with something which dropped behind the bench on which she was seated [Pr. Tr. pp. 6-9]; that he examined it and it was a condom containing a white powdery substance. He said he then examined her arms and that they showed "wounds and scabs resembling those made by hypodermic needles" [Pr. Tr. pp. 10, 11]. This was stricken, and the officer was permitted to state that these marks "weren't like they normally are on most people who usually use narcotics, they were spread out" [Pr. Tr. p. 11]. It was stipulated that the contents of the condom contained a twenty percent mixture of heroin [Pr. Tr. p. 4].

At the trial, petitioner testified (Partial Statement on Appeal, pp. 2-3) that at the scene of the arrest, she was informed there was a "possible warrant" against her, and she would be taken to the police station and booked; that she had demanded to see it. That there were no violations for which such a warrant could have issued. At the police station, she had asked, again, to see the warrant, and had been told to shut up. She denied that she had had the condom before finding it in the police station. The District Attorney [Rep. Tr. p. 13], stated the evidence of the existence

of a warrant had been lost. No attempt had been made to produce any evidence of, either an action in which a warrant might have issued, or any actual warrant, either at arrest, at the preliminary hearing, or at the subsequent trial.

Although there was a court reporter at the trial, the notes taken of the oral proceedings were lost. Petitioner maintains that her counsel made repeated demands for the production of the warrant claimed by the prosecution, as well as repeated objections to testimony concerning the alleged warrant, as not being the best evidence, and that the testimony as to existence and contents of such a warrant was hearsay, and when no warrant was produced, made a motion to suppress the evidence, upon the grounds, *inter alia,* that no probable cause for the arrest had been shown, and that for lack of probable cause, the arrest was in violation of petioner's constitutional rights under the 4th and 14th Amendments, United States Constitution. The demands for production of the warrant were denied, the objections to the testimony concerning the alleged warrant and its existence, were overruled, and the motion to suppress was denied.

While the cause was pending on appeal, the absence of a reporters transcript of the trial was noted, and a partial statement on appeal was prepared. The trial court refused to certify to the numerous demands for production of the warrant, or to the objections to testimony, but did permit the inclusion of the motion to suppress, and the testimony of the petitioner, in which was recounted, demands made by her, at the time of arrest and later, at the police station (See Engrossed Partial Statement on Appeal).

Reasons for Granting the Writ.

While this case is of great importance to this petitioner, who will be stigmatized for life, and will be compelled to suffer the penalties of conviction of two felonies, and the disabilities and harassments of a 5-year probationary period, if the writ is not granted, yet there are matters here involved which are of more general importance to all.

First, the rights of many other citizens are involved, because of the frequency with which similar situations arise, in which police engage in unreasonable searches and seizures, in violation of constitutional rights, and second, the obedience of the states to the mandates of this Court, it also involved.

Absent Suspicious Actions and Circumstances Commission of a Traffic Offense Such as Running a Red Light, Furnish No Ground for Police Investigation or Search.

We contend that the practice of unnecessary harassment of motorists who may commit minor traffic violations, whether by searching their cars or persons, or by making "warrant checks" by radio, is unreasonable, and violates the rights secured by the 4th and 14th Amendments, equally as any other "search and seizure".

Although the protection of the 4th Amendment is most often invoked to protect the right to security of things, its first provision relates to persons: "The right of the people to be secure *in their persons* . . ."

Brinegar v. United States, (1949), 338 U.S. 160, 93 L. ed. 1879;

Carroll v. United States, (1925) 267 U.S. 132, 69 L. ed. 543.

Where the question of search, following a citation for a traffic violation, or an arrest, it has been held that "there are no fruits of crime in passing a red light", and that a search may only be made for the instrumentalities of the offense.

People v. Marsh, 281 N.Y.S. 2d 789;
People v. Rodriguez, 262 N.Y.S. 2d 859;
State v. Cuellar, (Conn.) 200 A. 2d 729.

The holding has been similar, in Federal Courts.
United States v. Tate, 209 F. Supp. 762.

As in *Mapp v. Ohio*, the policemen, here, claimed a warrant, but none was ever provided or produced.

Although this petitioner was not, and the petitioner *Mapp* was not, a majority of leading cases involving violation of 4th Amendment rights, are ones in which the accused were engaged in crime for profit, and in most instances, clearly guilty.

It has been the constant reiteration of this Court, and lately, of reviewing courts, generally, that the constitutional rights of these, however guilty, must be safeguarded, if the more law abiding, more respected and respectable members of our society are to be protected in their enjoyment of these self-same rights.

This is unquestionably true. However, in recognizing this altruism, many, overlooking, or naively blind to the outlook of "good" policemen, are unduly inclined to look askance at anyone who complains of ill-treatment and abuse of power by police. This has the unfortunate result of discouraging police victims who have no profit motive, and little money or time to vindicate

the more frequent and equally flagrant abuses of police power by policemen.

Like it or not, most "good" policemen describe legal and constitutional rights as being "for the birds". They respect most the policeman who knows how to, or who is generally able to violate those rights with impunity. Successful arrests achieved praise as good police work.

The case of this petitioner is illustrative of a class of cases involving widespread abuses and ignoring of legal and constitutional rights.

For years, in the larger centers, warrants have been issued, generally, by the clerk's office, without intervention of the magistrates, with printed signatures. Now, in the larger centers, they are issued by computer, without intervention of the clerk or the magistrate. No magistrate ever sees them, before issuance. No magistrate orders them issued. The computer fills in the blanks. The only blanks are for the name of the accused, the bail and the case number. All else, including signature, is printed.

Far too frequently, police ignore orders sent out by the courts, recalling a given warrant. For example, whether planned or accidental, this brief writer, on his way to appear before an appellate court, was stopped, forced to await a "warrant check", informed there was "a possible warrant". He was then taken to jail, booked and held until the warrant was brought to that jail. The warrant had been issued 11-years before. The 11-year-old court order recalling the warrant upon dismissal of the charge, was stapled to the warrant!

Here, the police, and the District Attorney ignored the demands for production of the warrant. Without

its production, as in *Mapp,* the arrest must be presumed to have been made without a warrant, for an alleged misdemeanor offense not committed in the officers' presence, and which was, therefore, unreasonable, unlawful, and a denial of due process, violative of the protections of the 4th Amendment, which extends to the States through the due process clause of the 14th Amendment.

Conclusion.

For the reasons stated, it is respectfully submitted that this petition for Writ of Certiorari should be granted.

Respectfully submitted,

VICKI LAUREL PARKER,
In Propia Personna.